

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

ARIBA, INC.,

Plaintiff,

v.

SKY TECHNOLOGIES, LLC

Defendant.

**05 CA 11883 WGY**

C.A. NO.

RECEIPT # 66939  
AMOUNT \$ 250.00  
SUMMONS ISSUED 1  
LOCAL RULE 4.1 1  
WAIVER FORM 1  
MCF ISSUED 1  
BY DPTY. CLK. M.S.  
DATE 9/16/2005

**COMPLAINT FOR DECLARATORY RELIEF**

Plaintiff ARIBA, INC., ("Ariba"), for its complaint against Sky Technologies LLC ("Sky"), states as follows:

MAGISTRATE JUDGE JLA

**PARTIES**

1. Plaintiff Ariba is a Delaware corporation having its principal place of business at 807 11th Avenue, Sunnyvale, California 94089. Ariba sells a line of software products and related services referred to generically in its marketing materials as "Ariba Spend Management Solutions." These products and services are intended to enable enterprises to efficiently manage the purchasing of non-payroll goods and services required to run their business.

2. Defendant Sky is a Massachusetts limited liability company having its principal place of business at 41 Rutland Square, Boston, Massachusetts 02118.

**JURISDICTION AND VENUE**

3. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the patent laws of the United States, 35 U.S.C. § 1 *et. seq.* There exists an actual and justiciable controversy between Ariba and Sky.

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1338, and 2201-2.

5. This Court has personal jurisdiction over Sky because Sky has its principal place of business in this judicial district.

6. Venue in this judicial district is proper under 28 U.S.C. §§ 1391 and 1400.

**GENERAL ALLEGATIONS**

7. U.S. Patent No. 6,338,050 ("the '050 patent"), titled "System and Method for Providing and Updating User Supplied Context for a Negotiations System," issued on January 8, 2002 from an application filed November 16, 1998. The '050 patent identifies Jeffrey Conklin, David Foucher, and Daniel Foucher as inventors, and "Trade Access, Inc." as the assignee.

8. U.S. Patent No. 6,141,653 ("the '653 patent"), titled "System for Interactive, Multivariate Negotiations Over a Network," issued on October 31, 2000 from an application filed November 16, 1998. The '653 patent identifies Jeffrey Conklin, David Foucher, and Daniel Foucher as inventors, and "TradeAccess Inc." as the assignee.

9. U.S. Patent No. 6,336,105 ("the '105 patent"), titled "System and Method for Representing Data and Providing Electronic Non-Repudiation in a Negotiations

System" issued on January 1, 2002 from an application filed November 16, 1998. The '105 patent identifies Jeffrey Conklin, David Foucher, and Daniel Foucher as inventors, and "Trade Access Inc." as the assignee.

10. The '050, '653, and '105 patents were all filed on the same day and have very similar if not identical specifications. They generally relate to systems for conducting negotiations over a network, such as the Internet, among two or more parties. The claims of the three patents are also very similar.

11. On December 18, 2003, Sky filed a complaint in the Eastern District of Texas against IBM Corporation ("IBM"), alleging, *inter alia*, that IBM had infringed and continues to infringe the '050, '653, and '105 patents, *Sky Technologies LLC v. IBM Corporation*, E.D. Texas Case No. 2:03-cv-00454-DF (the "IBM Litigation"). In that action Sky alleges that it is the successor-in-interest to Trade Access Inc. and to all of the rights to and interest in the '050, '653, and '105 patents.

12. Ariba has entered into certain agreements with IBM authorizing IBM to resell and to implement certain Ariba software products.

13. On August 26, 2005, Sky served a supplemental interrogatory response in the IBM litigation alleging that one basis for its patent infringement allegations against IBM is that IBM contributes to and/or induces infringement of the patents-in-suit by virtue of its actions with respect to Ariba products and services. Sky further provided a claim chart ("August 26 Claim Chart") setting forth its detailed contentions as to how certain of Ariba's products called Ariba QuickSource and Ariba Contract Workbench allegedly infringe claim 1 of the '653 patent. IBM provided this interrogatory response and claim chart to Ariba, and IBM has demanded indemnity from Ariba for Sky's claims

of patent infringement relating to Ariba products.

14. Immediately following its allegations that products sold by Ariba infringe the patents in suit as set forth in the August 26 Claim Chart, Sky served on Ariba a third-party subpoena broadly seeking all documents relating to all of Ariba's products. Sky informed Ariba in a letter dated August 31, 2005 that it was serving the subpoena regarding Ariba's products because "Sky believes these documents and information will show that IBM directly and/or contributorily infringes Sky's patents and that IBM has induced others to infringe Sky's patents". In the context of the August 26 Claim Chart, Ariba reasonably understands this letter to mean that Sky is seeking to immediately obtain documents and information from Ariba in an attempt to prove that Ariba's products directly infringe Sky's patents.

15. The allegations of infringement made by Sky in the IBM Litigation regarding Ariba's products, the subpoena then served on Ariba by Sky in connection with that action and the letter to Ariba, and the demand for indemnification by IBM, the relative sales volume of accused infringing products by Ariba compared to IBM and other facts and circumstances place Ariba in reasonable apprehension of an imminent lawsuit by Sky accusing Ariba of infringing the '050, '653, and '105 patents.

16. There exists a live, justiciable controversy between Ariba and Sky relating to the validity and Ariba's alleged infringement of the '050, '653, and '105 patents.

**FIRST CAUSE OF ACTION**  
**DECLARATORY RELIEF--INVALIDITY**

17. The allegations of paragraphs 1-16 above are incorporated herein.
18. The claims of the '050, '653, and '105 patents are invalid on one or more grounds specified in 35 U.S.C. §§ 101-112 as a condition of patentability.
19. Ariba is entitled to declaratory judgment that the claims of the '050, '653, and '105 patents are invalid.

**SECOND CAUSE OF ACTION**  
**DECLARATORY RELIEF--NONINFRINGEMENT**

20. The allegations of paragraphs 1-16 above are incorporated herein.
21. Ariba has not infringed and is not infringing any claim of the '050, '653, or '105 patents, either literally or under the doctrine of equivalents.
22. Ariba has not contributed to infringement by others, or actively induced others to infringe, any claim of the '050, '653, or '105 patents.
23. Ariba is entitled to declaratory judgment of noninfringement in its favor.

**PRAYER**

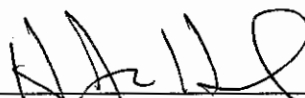
WHEREFORE, plaintiff Ariba prays this honorable Court for a judgment in its favor and against defendant Sky as follows:

- a) an entry of judgment that the claims of the '050, '653, and '105 patents are invalid;
- b) an entry of judgment that Ariba's software products and related services do not infringe, either directly or indirectly, any valid, enforceable claim of the '050, '653, or '105 patents;
- c) an entry of judgment that Ariba has not infringed, either directly or indirectly, any valid, enforceable claim of the '050, '653, or '105 patents;
- d) a declaration that Sky, its officers, agents, employees, attorneys and all persons in active concert or participation with them, be permanently enjoined from suing or threatening to sue, or making any charge against Ariba, or its distributors, licensees or customers, concerning alleged infringement of the '050, '653, or '105 patents;
- e) an award of costs and attorneys fees pursuant to 35 U.S.C. § 285 in that this is an exceptional case or as otherwise permitted by law; and

f) such other and further relief as the Court may deem appropriate.

Respectfully submitted,

ARIBA, INC.,  
By its attorneys,



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Geri L. Haight, BBO No. 638185

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DATED: September 16, 2005

LIT 1541702v.1



## CIVIL COVER SHEET

OJS 44 (Rev. 11/04)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

ARIBA INC.

**DEFENDANTS**

SKY TECHNOLOGIES LLC

(b) County of Residence of First Listed Plaintiff Santa Clara County, CA  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Suffolk

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)

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**05 CA 11883 WGY****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities—Employment <input type="checkbox"/> 446 Amer. w/Disabilities—Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §§ 2201 and 2202, 35 U.S.C. § 1 et. seq.

Brief description of cause:

Declaratory judgment of patent invalidity and noninfringement

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

9/16/2005

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Ariba Inc. v. Sky Technologies LLC

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases  
740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 241, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☒ NO ☐

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME H. JOSEPH HAMELINE BBO No. 218710ADDRESS MINTZ, LEVIN, et al. One Financial Center Boston, MA 02111TELEPHONE NO. (617) 542-6000